

**Emergency Rule**

LSA Document #13-223(E)

**DIGEST**

Amends [65 IAC 3-3-2](#) regarding a retailer's duty to update the commission regarding material changes. Amends [65 IAC 3-3-2.2](#) regarding the director's authority to prescribe fees for a certificate of authority, renewal of a certificate of authority, or a duplicate or amended certificate of authority. Amends [65 IAC 3-3-2.5](#) regarding the criteria for selecting retailers and to eliminate duplication with [IC 4-30](#). Adds [65 IAC 3-3-2.7](#) regarding the director's authority to issue, renew, restrict, and revoke a temporary certificate of authority. Amends [65 IAC 3-3-2.8](#) to eliminate duplication with [65 IAC 3-3-2.2](#). Amends [65 IAC 3-3-5](#) regarding timing of notification to the commission. Amends [65 IAC 3-3-5.5](#) regarding location of retailer sales and to separate unrelated subject matter. Amends [65 IAC 3-3-5.7](#) regarding the procedure for changing a retailer's ownership or form of business. Amends [65 IAC 3-4-5](#) in order to establish a minimum commission rate for retailers. Repeals [65 IAC 3-4-1](#), [65 IAC 3-4-4](#), [65 IAC 3-4-7](#), [65 IAC 3-4-8](#), and [65 IAC 3-4-9](#) to eliminate duplication with [IC 4-30](#) and move certain retailer requirements to contractual documents instead of the administrative code. Makes numerous technical and ministerial changes. Effective May 24, 2013.

[65 IAC 3-3-2](#); [65 IAC 3-3-2.2](#); [65 IAC 3-3-2.5](#); [65 IAC 3-3-2.7](#); [65 IAC 3-3-2.8](#); [65 IAC 3-3-5](#); [65 IAC 3-3-5.5](#); [65 IAC 3-3-5.7](#); [65 IAC 3-4-1](#); [65 IAC 3-4-4](#); [65 IAC 3-4-5](#); [65 IAC 3-4-7](#); [65 IAC 3-4-8](#); [65 IAC 3-4-9](#)

SECTION 1. [65 IAC 3-3-2](#) IS AMENDED TO READ AS FOLLOWS:

**Rule 3. Requirements for Certificate of Authority****[65 IAC 3-3-2](#) Application for certificate of authority****Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)**Affected:** [IC 4-30](#)

Sec. 2. (a) Any person interested in obtaining a certificate of authority for the sale of lottery products shall first file an application on such form or forms as may be approved by the director.

(b) An applicant for a certificate of authority accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in relation to the application process or the disclosure of public records. The applicant expressly waives any claim for damages against the commission that may result from the application process.

(c) A single applicant may apply for certificates of authority for multiple selling locations using one (1) application as long as each selling location is identified in the application.

(d) Each applicant shall submit, in conjunction with its application, payment of a nonrefundable application fee, as specified in section 2.2 of this rule.

(e) Any person that seeks a certificate of authority or retailer contract shall secure approval or authorization from any person, board, commission, agency, agent, or instrumentality which may have controlling authority over the applicant.

(f) An applicant must comply with all requests for information, documents, or other materials that may be reasonably necessary to determine the eligibility of the applicant to receive a certificate of authority.

(g) All applicants and retailers are under a continuing duty to disclose any material change in information submitted in its application to the commission or other information provided to the commission. ~~at the commission's request.~~

(h) Any misrepresentation or omission made by an applicant or retailer may be grounds for denial of an application or revocation or suspension of a certificate of authority held by a retailer.

(i) An applicant bears the burden of demonstrating that the applicant is eligible to receive or hold a certificate of authority and must continue to meet all conditions or restrictions relating to possession of a certificate of authority after issuance or any subsequent renewal.

(j) An application for a certificate of authority will be considered active for only one (1) year after it is submitted and will be closed without action by the commission if the applicant has not provided all fees or information necessary for the commission to make a determination of eligibility within that time. An applicant whose application has been closed must reapply by completing a new application and paying all necessary application fees.

(State Lottery Commission; [65 IAC 3-3-2](#); emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 98; emergency rule filed Oct 2, 1989, 2:10 p.m.: 13 IR 300; emergency rule filed May 4, 1990, 4:35 p.m.: 13 IR 1727; emergency rule filed Jan 29, 1992, 12:00 p.m.: 15 IR 1035; emergency rule filed Apr 14, 1992, 5:00 p.m.: 15 IR 1970; emergency rule filed Apr 19, 1993, 5:00 p.m.: 16 IR 2193; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 2. [65 IAC 3-3-2.2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[65 IAC 3-3-2.2](#) Retailer fees**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-15](#); [IC 4-30-9](#)

Sec. 2.2. (a) An applicant for: ~~a certificate of authority must pay a nonrefundable application fee in one (1) of the following amounts, depending on the products to be sold:~~

~~(1) If the retailer will sell all lottery products, the nonrefundable application fee is one hundred dollars (\$100) per each ticket selling location.~~

~~(2) If the retailer will only sell scratch-off or pull-tab, or both, lottery products, the nonrefundable application fee is fifty dollars (\$50) per each ticket selling location.~~

**(1) a certificate of authority;**

~~(b) A retailer applying for (2) the renewal of an existing certificate of authority; must or~~

**(3) a duplicate or amended certificate of authority;**

~~shall pay a nonrefundable renewal fee with its application fee in the amount of fifty dollars (\$50) for each selling location being renewed. an amount to be determined by the director in accordance with [IC 4-30-3-15](#).~~

~~(c) If a certified retailer under contract with the commission requires a duplicate or amended certificate of authority for display under section 2.5(c) of this rule, the retailer must pay to the commission a fee in the amount of ten dollars (\$10) prior to a duplicate or amended certificate of authority being issued.~~

(State Lottery Commission; [65 IAC 3-3-2.2](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed Jul 29, 2010, 3:51 p.m.: [20100804-IR-065100492ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 3. [65 IAC 3-3-2.5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[65 IAC 3-3-2.5](#) Selection of retailers**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9-2](#)

Sec. 2.5. (a) ~~The commission must base selection of retailers on business considerations and public convenience. In the selection of retailers, the commission will~~ **may consider any information relevant to maximizing revenues in a manner that is consistent with the dignity of the state and the welfare of its citizens, including, but not limited to,** the following factors:

(1) The considerations provided in [IC 4-30-9-2](#).

- (2) The average number of customers who visit the potential retailer.
- (3) The **locations and** hours of operations of the potential retailer.
- (4) ~~The capability and willingness to [sic] sell all~~ **proximity other** lottery products provide by the commission-  
**retailers.**
- (5) The capability and willingness to **sell all, or any variety of, currently available lottery products as  
deemed appropriate by the commission.**
- (6) The capability and willingness to** pay prizes up to the maximum amount payable by retailers at various  
times during the day.
- ~~(6)~~ **(7)** The capability and willingness to promote the sale of lottery products independently or in cooperation  
with the commission.
- ~~(7)~~ **(8)** The capability and willingness to comply with the provision of [IC 4-30](#) and this title.

(b) The commission shall only issue a certificate of authority to selected retailers that applied for and are eligible to receive a certificate of authority under this article.

~~(c) A certificate of authority issued by the commission shall be posted by the retailer at the retail location in a conspicuous location accessible to the public.~~

~~(d) A certificate of authority shall bear the:~~

- ~~(1) Name of the retailer.~~
- ~~(2) Physical address of the premises.~~
- ~~(3) Expiration date of the certificate of authority.~~

(State Lottery Commission; [65 IAC 3-3-2.5](#); emergency rule filed Dec 18, 2009, 10:05 a.m.:  
[20091230-IR-065090989ERA](#); emergency rule filed Jul 29, 2010, 3:51 p.m.: [20100804-IR-065100492ERA](#);  
emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 4. [65 IAC 3-3-2.7](#) IS ADDED TO READ AS FOLLOWS:

**[65 IAC 3-3-2.7](#) Temporary certificate of authority**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

**Sec. 2.7. (a)** The director may issue a temporary certificate of authority to a retailer or an applicant for a certificate of authority for any purpose deemed useful by the director, including without limitation the sale of lottery products at a special event or location in accordance with procedures prescribed by the director.

**(b)** A temporary certificate of authority issued by the director shall be valid for a maximum of ninety (90) days.

**(c)** The director may do the following regarding a temporary certificate of authority:

- (1)** Renew it prior to its expiration.
- (2)** Place restrictions or conditions upon it.
- (3)** Revoke it at any time.

(State Lottery Commission; [65 IAC 3-3-2.7](#); emergency rule filed May 24, 2013, 11:15 a.m.:  
[20130529-IR-065130223ERA](#))

SECTION 5. [65 IAC 3-3-2.8](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 3-3-2.8](#) Expiration or renewal of certificate of authority**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

**Sec. 2.8. (a)** Upon expiration of a retailer's certificate of authority at a selling location, any retailer contract

entered into between the retailer and the commission for that selling location ~~must terminate~~. **terminates.**

(b) Prior to expiration of a certificate of authority, a retailer may apply to renew the certificate of authority by filing an application for renewal on such form or forms as may be approved by the director.

(c) A certificate of authority may be renewed at the discretion of the director upon a determination that the retailer remains in compliance with the eligibility and selection standards provided in [IC 4-30](#) and this title.

~~(d) A retailer may be required to pay a nonrefundable renewal fee with its application for renewal, as specified in section 2.2 of this rule.~~

(State Lottery Commission; [65 IAC 3-3-2.8](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed Jul 29, 2010, 3:51 p.m.: [20100804-IR-065100492ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 6. [65 IAC 3-3-5](#) IS AMENDED TO READ AS FOLLOWS:

### **[65 IAC 3-3-5](#) Notice of changes**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

Sec. 5. (a) A retailer shall notify the commission in writing at least thirty (30) calendar days in advance of the occurrence of any of the following changes:

- (1) Voluntary cancellation or termination of the retailer contract by the retailer or otherwise ceasing business operations or the sale of lottery products, either permanently or temporarily.
- (2) A change in the designated bank account in which the retailer has deposited funds from the sale of lottery products or from which payments are made.
- (3) Any proposed change in a selling location for which a certificate of authority is issued.
- (4) Any proposed change in the controlling ownership interest of the retailer, whether through an asset purchase, stock purchase, merger, or acquisition.
- (5) Any change in the form of a retailer's business organization, such as, but not limited to, a sole proprietorship, partnership, corporation, or limited liability company.
- (6) Any change in the taxpayer identification number of the retailer.

(b) **Unless earlier notification is required by this article**, a retailer shall notify the commission immediately after the occurrence of the following:

- (1) The incapacitation or death of a sole proprietor, partner, or majority owner.
- (2) The dissolution of the retailer or filing of a voluntary or involuntary petition in bankruptcy.
- (3) A change in any of the information submitted to the commission in the retailer's most recent application or renewal form.
- (4) Any change causing the retailer to no longer satisfy fully all requirements in [IC 4-30](#) and this article.

(State Lottery Commission; [65 IAC 3-3-5](#); emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 98; emergency rule filed May 4, 1990, 4:35 p.m.: 13 IR 1727; emergency rule filed Apr 14, 1992, 5:00 p.m.: 15 IR 1971; emergency rule filed Apr 19, 1993, 5:00 p.m.: 16 IR 2193; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed Jul 29, 2010, 3:51 p.m.: [20100804-IR-065100492ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 7. [65 IAC 3-3-5.5](#) IS AMENDED TO READ AS FOLLOWS:

### **[65 IAC 3-3-5.5](#) Change of location**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

Sec. 5.5. (a) **Unless authorized by the commission to temporarily sell lottery products at a special**

**event or location under section 2.7 of this rule**, each lottery ticket sales location of a retailer must be a fixed location.

(b) If a retailer's selling location changes, the retailer shall obtain an amended certificate of authority prior to selling lottery products at the new location.

(c) The commission must determine whether the new selling location continues to meet the selection and eligibility criteria in [IC 4-30](#) and this article prior to issuing an amended certificate of authority to change the selling location of a retailer.

(d) A retailer who is otherwise authorized to sell lottery products may be temporarily authorized by the director **under section 2.7 of this rule** to sell products at a new location prior to issuance of an amended certificate of authority at the new location.

~~(e) The director may issue a temporary certificate of authority to a retailer for the sale of lottery products at a special event in accordance with any procedures prescribed by the director.~~

~~(f) Any temporary certificate of authority issued by the director shall be valid for a maximum of ninety (90) days. A temporary certificate of authority may be renewed by the director prior to its expiration.~~

~~(g) The director may place restrictions or conditions upon a temporary certificate of authority. The recipient of a temporary certificate of authority shall comply with any and all restrictions or conditions.~~

~~(h) A temporary certificate of authority may be revoked by the director at any time.~~

*(State Lottery Commission; [65 IAC 3-3-5.5](#); emergency rule filed Apr 19, 1993, 5:00 p.m.: 16 IR 2194; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))*

SECTION 8. [65 IAC 3-3-5.7](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 3-3-5.7](#) Change of ownership or entity structure**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

Sec. 5.7. (a) A retailer may not sell, assign, or transfer a certificate of authority. A certificate of authority is only valid as to the person to whom the certificate of authority was issued by the commission.

(b) If a retailer's form of business association changes, the retailer must obtain **an a temporary or** amended certificate of authority that reflects the change prior to selling any lottery products under the new business organization.

(c) If a controlling ownership interest in a retailer is acquired or transferred, whether in one (1) transaction or a series of transactions, the successor to the controlling interest must obtain a new certificate of authority, **prior to completing the transaction or series of transactions**, for each selling location acquired in accordance with the provisions of this article.

~~(d) In the event that a controlling ownership interest in a retailer is acquired or transferred, the original retailer shall continue to be liable for the successor owner's lottery transactions, as if the successor owner is an agent of the retailer, unless and until:~~

~~(1) the retailer delivers to the commission written notice specifically requesting cessation of lottery product sales;~~

~~(2) the director issues a temporary certificate of authority under subsection (f); or~~

~~(3) the successor owner is issued a new certificate of authority by the commission.~~

(e) **(d)** The director may adopt, from time to time, any appropriate and necessary procedures to verify the ownership of a retailer and/or any retailer selling location to ensure that lottery products are in fact sold only by retailers under an approved certificate of authority and retailer contract and in accordance with [IC 4-30](#) and this title.

(f) **(e)** The director may issue a temporary certificate of authority to a retailer or applicant while an application for a new or amended certificate of authority is pending as a result of:

(1) a change of a controlling ownership interest in an existing retailer; or

(2) a change in the form of business association of an existing retailer;

prior to the issuance of the new or amended certificate of authority.

(State Lottery Commission; [65 IAC 3-3-5.7](#); emergency rule filed Dec 18, 2009, 10:05 a.m.:

[20091230-IR-065090989ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 9. [65 IAC 3-4-5](#) IS AMENDED TO READ AS FOLLOWS:

### **[65 IAC 3-4-5](#) Compensation**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-9](#)

Sec. 5. (a) **Unless otherwise agreed to by a retailer via contract with the commission**, a retailer shall be entitled to compensation of ~~six at least five percent (6%) (5.0%)~~ of the valid lottery ticket price of each scratch-off ticket or ~~pull-tab~~ **draw** ticket sold by such retailer, subject to deduction for returns ~~as may be allowed under this article~~. A retailer shall be entitled to compensation of six percent (6%) of the valid draw ticket price of each draw ticket sold by such retailer, subject to deduction for **or** cancellations as may be allowed under this article.

(b) In addition to the compensation under subsection (a), the commission may, from time to time, establish retailer incentive programs whereby retailers are entitled to bonus payments by satisfying designated criteria which may include, but not be limited to, volume of lottery product sales, number of lottery tickets redeemed, or the sale of winning lottery tickets.

(c) Any compensation or incentive payment made under this section may be supplemented or reduced in exchange for the provision of other supplemental services provided by the commission or the retailer as provided in a retailer's contract with the commission.

(d) No retailer or employee of a retailer shall request, demand, or accept gratuities or similar compensation in exchange for the performance of duties authorized pursuant to the retailer's contract.

(State Lottery Commission; [65 IAC 3-4-5](#); emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 103; emergency rule filed Jan 29, 1992, 12:00 p.m.: 15 IR 1040; emergency rule filed Jul 29, 1992, 10:00 a.m.: 15 IR 2599; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Aug 23, 2002, 1:27 p.m.: 26 IR 42, eff Aug 29, 2002; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Dec 18, 2009, 10:05 a.m.: [20091230-IR-065090989ERA](#); emergency rule filed Jul 29, 2010, 3:51 p.m.: [20100804-IR-065100492ERA](#); emergency rule filed Mar 7, 2013, 10:59 a.m.: [20130313-IR-065130088ERA](#); emergency rule filed May 24, 2013, 11:15 a.m.: [20130529-IR-065130223ERA](#))

SECTION 10. THE FOLLOWING ARE REPEALED: [65 IAC 3-4-1](#); [65 IAC 3-4-4](#); [65 IAC 3-4-7](#); [65 IAC 3-4-8](#); [65 IAC 3-4-9](#).

LSA Document #13-223(E)

Filed with Publisher: May 24, 2013, 11:15 a.m.

Posted: 05/29/2013 by Legislative Services Agency

An [html](#) version of this document.